IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WP(C).No. 33061 of 2006(J)

PETITIONER:

DR.N.A.SONNI, AGED 54 YEARS,
S/O.N.K.ELIYAS, ASSISTANT PROJECT OFFICER,
(ASSISTANT DIRECTOR), REGIONAL ARTIFICIAL
INSEMINATION CENTER), MEENANGADI, WAYANAD
RESIDING AT "LOVEDALE", PADMAPRABHA ROAD,
KALPETTA- 673121, WAYANAD.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, AGRICULTURE (AHE) DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM-695001.

2. THE DIRECTOR OF ANIMAL HUSBANDARY (E),
TRIVANDRUM.

BY GOVT. PLEADER MR. BIJOY CHANDRAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 33061 OF 2006

Dated this the 19th December, 2006.

JUDGMENT

The petitioner is a Veterinary Surgeon who commenced service on 17.7.1979. By virtue of seniority he was promoted to the post of Assistant Project Director. The next promotion post is that of Deputy Director/Project Officer. He is due to retire from service by the end of December 2007.

2. The Departmental Promotion Committee which met for the preparation of the select list of Assistant Project Directors for appointment to the post of Deputy Directors found the petitioner fit to be promoted and his name was included in the select list against serial No: 6. The select list was published as per notification dated 1.9.2006. Therefore, against vacancies that would arise thereafter, the petitioner had a right to be appointed as Deputy Director/Project Officer. While so, a fax message was received by the Government on 17.10.2006 to the effect that a parallel semen distribution system was launched in the State with the active support of the petitioner with the agency for providing semen. The categories of semen available and rate of the semen were also given in the fax message. It was reported that the petitioner was behind

the above action and he was trying to co-ordinate various retired Veterinarians as well as Live Stock Inspectors for taking the semen, propagating that the semen of Kerala Livestock Development Board is of low grade. It was also informed that the petitioner had been organising campaign against the State Breeding policy of the Government of Kerala. It was also informed that the petitioner was running a private business under the name and style "care agrovet" without due permission from the Government. Based on the above fax message memo of charges dated 26.10.2006 was framed by the Government vide Ext.P1. The charges framed against the petitioner are the following:-

1. Promoting parallel semen distribution system
2. Propaganda against the government system
3. Violation of conduct rules (KGSC Rule 1960)

The charge memo proceeds to say that the petitioner is directed to show cause why disciplinary action as contemplated under the Kerala Civil Services (Classification, Control and Appeal) Rules 1960 should not be taken against him. The memo of charges also contains the following statements:-

> "You are allowed 15 days time from the date of receipt of this communication to submit your written statement of defence. If your written statement is not received within the specified time the matter will be proceeded with on the resumption that you have no explanation to offer. You are also required to

> state whether you decide to be heard in person. You may peruse the relevant records mentioned in the statement of allegations and take down extracts from them if so desired in the presence of Joint Secretary to Government Agrl (AH) Department on any day prior to the due date for submission of your written statement of defence on any day which will be fixed in advance at your request. A statement of allegations on which the above charges are framed is attached."

3. The petitioner has submitted his statement of defence vide Ext.P2. Pending consideration of Ext.P2 the Government issued Ext.P3 order dated 5.12.2006 promoting 18 Senior Veterinary Surgeons as Deputy Directors. The petitioner's name is not included among those thus promoted. At the same time Ext.P3 says that the petitioner will be promoted only after finalising the disciplinary action initiated against him as per Note (iii)under Rule 28 (b)(i)(7) of Part II K.S & S.S.R. Immediately on receipt of Ext.P3, he filed Ext.P4 representation before the Government requesting to consider him for promotion by virtue of the inclusion of his name in the select list and contending further that law does not prohibit his promotion as wrongly stated in Ext.P3 order.

4. The main contention urged by the learned senior counsel appearing for the petitioner is that Ext.P1 falls short of a memo of charge and it can, at the best, be treated only as a notice, and therefore, it is not a case where departmental proceedings as contemplated under the

disciplinary rules have commenced against the petitioner. It is further contended that Note(iii) of Rule 28(b)(i)(7) contemplates departmental proceedings taken for the imposition of a major penalty under the disciplinary rules and since Ext.P3 does not give any indication as to whether such proceedings for the imposition of major penalty, the exclusion of the petitioner from the list of promotees is unjustified.

5. Note (iii) of the aforesaid rules reads as under:-

> "Officers whose names are included in the select list but who are subsequently placed under suspension or against whom criminal proceedings are taken in a sessions court or in any other higher court for grave offences and officers against whom departmental proceedings are taken for the imposition of a major penalty under the disciplinary rules applicable to them, shall not be promoted on the basis of their inclusion in the select list until they are fully exonerated of the charges against them. If the officer is fully exonerated of the charges, he shall be promoted on the basis of his position in the select list to the post which has been filled on a temporary basis pending disposal of the charges against him. If the Officer is not fully exonerated, the Departmental Promotion Committee may consider each case on its own merit. Officers whose names are included in the select list but against whom departmental proceedings for imposing a minor penalty are initiated subsequently, may be promoted on a temporary basis pending disposal of the proceedings against them. If the Officer is fully exonerated of the charges the temporary promotion shall be treated as regular promotion and if the Officer is not fully exonerated of the charges, his case may be considered by the Departmental Promotion Committee on merits."

6. Govt. Pleader, on instruction, submits that Ext.P1 memo of charge is for a major penalty and therefore the contention of the petitioner that no disciplinary action for imposition of major penalty has been taken against him is not factually correct.

7. The short question for consideration is whether Ext.P1 is a memo of charge which comes within the purview of Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules 1960 which has laid down the procedure for imposition of major penalties. Rule 15(2)(a) reads as follows:-

> "Whenever a complaint is received, or on consideration of the report of an investigation, or for other reasons, the disciplinary authority or the appointing authority or any other authority empowered by Government in this behalf is satisfied that there is a prima facie case for taking action against a Government Servant, such authority shall frame definite charge or charges which shall be communicated to the Government servant together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. The accused Government Servant shall be required to submit within a reasonable time to be specified in that behalf a written statement of his defence and also to state whether he desires to be heard in person. The Government servant may on his request be permitted to peruse or take extracts from the records pertaining to the case for the purpose of preparing his written statement; provided that the disciplinary or other authority referred to above may, for reasons to be recorded in writing, refuse him such access, if in its opinion such records are not strictly relevant to the case or it is not desirable in

> the public interest to allow such access. After the written statement is received (or if no such statement is received) within the time allowed, the authority referred to above may, if it is satisfied that a formal enquiry should be held into the conduct of the Government servant, forward the record of the case to the authority or officer referred to in clause (b) and order that a formal enquiry may be conducted."

According to the counsel for the petitioner only when formal enquiry is ordered after examining the written statement of defence filed by the delinquent employee, it can be said that departmental proceedings for disciplinary action has been initiated.

8. I cannot agree with the proposition advanced on behalf of the petitioner. On going through the language of Rule 15(2)(a) it is clear that Ext.P1, styled as a memo of charge, has been framed in the manner prescribed by the aforesaid rule. Merely for the reason that the memo of charge does not say that the proceedings will ultimately end in the imposition of a major penalty, it cannot be contended that Ext.P1 is not a memo of charge as contemplated by Rule 15(2)(a) of the aforesaid rules. The distinction will be clear on a perusal of Rule 16 of the Kerala Civil Services (Classification, Control and Appeal) Rules which is the procedure prescribed for the imposition of minor penalties. In Rule 16 the only requirement is the issuance of a memo of charge informing the petitioner about the proposal to take action for the imposition of

penalties as contemplated in items (i) to (iv) of Rule 11 of the rules and calling for the explanation of the delinquent employee in answer to the allegations made mention in the memo of charge. Items (v) to (ix) of Rule 11(1) are major penalties. It is not necessary that the memo of charge should state in advance the nature of the penalty that is likely to be imposed against the delinquent employee. It can be any of the penalties coming within items (v) to (ix). Which of the penalties should be imposed is a matter for the disciplinary authority to consider after the close of the formal enquiry, in cases where formal enquiry becomes necessary. It cannot be said that the starting of the formal enquiry marks the commencement of the disciplinary action. Disciplinary action will be deemed to have set in motion, the moment the disciplinary authority considers it necessary to frame charges against the delinquent employee. Before framing the charges, the disciplinary authority shall have to apply its mind based on the materials available before it. If prima facie grounds exist for framing the charge and calling upon the delinquent to file written statement of defence, that is the starting point of disciplinary action as contemplated in the disciplinary rules as also Note (iii) of Rule 28(b)(i)(7) of K.S & S.S.R. A perusal of the model charges within the purview of Rules 15 and 16 of

Kerala Civil Services (Classification, Control and Appeal) Rules as given in the Manual of Disciplinary Proceedings published for the guidance of the disciplinary authorities will make it clear that Ext.P1 has been framed in conformity with the form shown therein. Hence the contention that Ext.P1 is only a notice and not a memo of charge does not appeal to my mind.

9. Since Ext.P1 is a memo of charge for the imposition of major penalty as contemplated in Rule 15 of the disciplinary rules, the provisions of Note (iii) of Rule 28 (b)(i)(7) are attracted. Therefore the exclusion of the name of the petitioner from the promotion list, despite his inclusion in the select list, is in accordance with law. The petitioner will have to wait for his turn until the disciplinary proceedings taken as per Ext.P1 are over. That is what the statutory rule says. In the result, the writ petition is liable to be dismissed. I do so.

K.K.DENESAN
Judge

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